Summary

This book is concerned with some aspects of criminal law in Surinam, formerly also called Dutch Guiana, on the north coast of South America. Until 1954 it was a Dutch colony, and at present an autonomous territory which acts independently as an equal partner in the Kingdom of the Netherlands.

Since the establishment of the Dutch government in 1667, Dutch criminal law has prevailed in Surinam. Initially this was the non-codified Roman-Dutch criminal law, but with the introduction of the codification in 1869 the country acquired its first penal code. The Dutch penal code, essentially the same as the French *Code Pénal,* had to be adapted to local conditions for the purpose. In 1916 this code was replaced by the Dutch penal code of 1886, also adapted to local conditions.

But Surinam is not a Western country; its economic, technological, and demographical structure is very different from the Dutch. The population, mainly consisting of descendants of Negroslaves and immigrants from India, Indonesia, and China, lives even today in closed groups with distinctive cultures which, divergent as they are, have one thing in common: they are all non-Western.

One of the cultures, that of the Bush Negroes, contains an indigenous customary law. The government does not recognize this law and its judges do not apply it, all the citizens are judged only by Western (Dutch) law. But the central government has not been able to prevent the Bush Negroes from retaining their customary law within their own circles. The first chapter of this book collects information from the literature which is only to be found in scattered, not easily accessible documents; among the information is an eye-witness account of a *kroetoe* (court sitting). The *eigen richting* (taking the law into one's own hand), the delicts, the trial by ordeal, the punishments, the judges, and the administrations of justice are touched upon.

The second chapter deals with the history of Western criminal law in Surinam. It includes the complete, hitherto unpublished, text of the oldest penal laws of the colonial government in the capital town of Paramaribo: *de Criminelle en Penale Wetten ende Ordonnantien* of February, 19th, 1669. In addition to these and other laws issued at Paramaribo, writs by the States of Holland and West Friesland as well as some of the imperial edicts of Charles V, such as the *Constitutio Criminalis Carolina,* were applied in Surinam up to 1869. Roman law was also used, but only alternatively in cases where Dutch law

could not meet the demand. Hence, Roman law was needed when slaves were involved. Dutch law, in so far as it came from the home country, took no cognizance of slaves, but Roman law did. Slavery has had an all-important influence on the criminal jurisdiction; slaves and freemen were no more equal before the criminal judge than they were before the world. Being a slave meant an increase of punishment for the delinquent. Offences committed by slaves were *crimina qualificata*. Slavery had a plane of contact with criminal law in the disciplinary law of a slave owner, the domestic jurisdiction. Within the framework of this disciplinary law the most degrading excesses took place. In this book, however, only the formal aspect of this disciplinary law wil be considered.

It is not accurately ascertainable to what extent the cruelty of the slaveholders contributed to the roughening of criminal law. It must suffice to state that cruelty is one of the distinctive features of the formal criminal law. The different methods by which the death penalty and flogging were inflicted, as given in the second chapter, serve to illustrate this point. Besides the dissimilar trials of slaves and freemen and the cruelties, the large discretionary power of the judge to choose his own means and measures of punishment was another characteristic of Roman-Dutch criminal law. The statute was not always the one and only standard, not even for judging the punishability of an action. The judge administered law 'according to the circumstances' just as the native judge still applies indigenous customary law to his tribe.

The second chapter closes with a history of the making of the penal codes of 1869 and 1916, with brief characteristics of the two codes and of an important penal law, not included in the code of 1869, *de Herziene Strafverordening van 1874* (the Reviewed Penal Act of 1874).

The third chapter is devoted to the action of a Western criminal law in a non-Western society. The theories of Gabriel Tarde and Cornelis van Vollenhoven may serve to demonstrate the erratic way in which various Western law systems have spread over the world in the last fifty years. Many non-Western countries have kept or even introduced a Western system of law after they attained independence. The inclination towards neglecting and suppressing customary law is great. As early as the end of the last century Gabriel Tarde wrote: 'Dans un groupe de peuples en contact, le plus civilisé communique son droit à ses voisins par une sorte d'exosmose juridique'. Cornelis van Vollenhoven gave proof of his doubts about this pronouncement in his system of relationships, in which he classed all law systems in a few large law families according to relationship. He subdivided these law families into main law branches, these into district laws, and the district laws further into regional laws. Thus he distinguished an Austronesian law family, an Indonesian law branch, and a Balinese district law. It follows from this theory that penetration of a foreign law will only be successful if the foreign and indigenous laws are related. Van Vollenhoven's *conditio sine qua non* suggested our search for possible harmful consequences of the application of Western law in Surinam. We did

not find such consequences however; on the contrary many persons in Surinam thought their uniform Western law system a favourable stimulus for the very dissimilar groups of population to grow into a national unity.

The fourth and last chapter deals with the general regulations of the penal code in Surinam and in particular with the articles that differ from the corresponding Dutch regulations. Many divergences are caused by the differences in social and climatic conditions. It is remarkable how often the colonial legislator was guided in the formulation of necessary divergences by regulations from the Indonesian penal code. In later times the code from the Dutch Antilles was sometimes followed. Like the Surinam code, both are adaptations from the Dutch penal code.

The main divergences appear in the punishments. Surinam still recognizes the death penalty in the form of hanging. The legislator's arguments in support of the maintenance of the death penalty are discussed in this chapter. There are ten capital crimes, among which are murder, subversion, help to the enemy, and a secret understanding with a foreign power followed by war with that power. The death penalty was last executed in the nineteen-thirties in three different cases. The Public Prosecution demanded the death penalty for the last time in 1948. The number of capital crimes in the Dutch Antilles has recently been reduced to two: a secret understanding with a foreign power followed by war with that power, and the rendering of help to an enemy.

The judge can rule that a convict sentenced to imprisonment or detention, be employed at public works. On the whole the judge is given more latitude in determining the ways in which imprisonment is carried out than in the Netherlands. Lastly important differences are found in the probation system, the confiscation of attached goods, and criminal law for juveniles and mentally deficient persons.